

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

PHOENIX BEVERAGES, INC., RODB LLC,  
WINDMILL DISTRIBUTING COMPANY, L.P.,  
UP FROM THE ASHES, INC., and other affiliated  
companies of PHOENIX BEVERAGES, INC.,

Plaintiffs,

vs.

EXXON MOBIL CORPORATION,  
EXXONMOBIL RESEARCH AND  
ENGINEERING COMPANY and QUANTA  
RESOURCES CORPORATION,

Defendants.

Case No. 1:12-CV-03771(PKC) (JO)

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EXXON MOBIL CORPORATION and QUANTA  
RESOURCES CORPORATION,

Third-Party Plaintiffs,

v.

ACE WASTE OIL, INC.; et al.,

Third-Party Defendants.

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**JOINT STATUS REPORT**

The undersigned Parties submit this joint status report pursuant to the Case Management and Scheduling Order dated December 6, 2012 (Doc. 31). The Plaintiffs and Defendants previously appeared for a case status conference before Your Honor on June 6, 2013.

**Status of Discovery Between Plaintiffs and Defendants:**

Discovery in this case has proceeded since the last case status conference and has consisted of the following:

- The Parties' exchange of paper discovery has continued on a rolling basis.
- Defendants anticipate producing additional documents following resolution of the Motion for Disqualification.
- Defendants served additional document subpoenas on non-parties to this action on June 14, 2013, June 18, 2013, July 22, 2013, and August 1, 2013.
- Plaintiffs served their First Requests for Admission to Defendant Exxon Mobil Corporation on June 21, 2013, which Exxon Mobil Corporation responded to on July 24, 2013.

**Status of Pleadings in Third-Party Action:<sup>1</sup>**

On July 1, 2013, Defendants filed Third-Party Complaints against a total of fifty Third-Party Defendants ("TPDs") (Docs. 74 and 75). Pursuant to this Court's November 13, 2013 Order, on November 27, 2013, all parties that have appeared in the case filed a joint submission proposing that the Court extend the deadline for TPDs' answers to the third-party complaint until 14 days after Judge Irizarry rules on a CERCLA 107(a) motion brought by TPDs against Quanta and Exxon in another matter, *DMJ Associates, LLC v. Carl A. Capasso*, Civil Action No.: 97-CV-7285 (DLI) (RML) (the "DMJ Litigation"). In addition, the parties proposed that the deadline for TPD's answers to cross claims be extended until all third-party defendants have answered the third-party complaints and a conference is scheduled at which the case management order for the third-party action is addressed. On December 2, 2013, the Court adopted and so-ordered the schedule proposed by the parties for answers to be submitted by the TPDs (Doc. 310).

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<sup>1</sup> In accordance with the Court's December 3, 2013 Order and the case management and scheduling order (Doc. 31), the Third-Party Defendants ("TPDs") and Federal TPDs listed on Exhibit A of the separate submission by Gibbons PC and the TPDs listed on Attachment A of the separate submission by Robinson & Cole LLP have reviewed this Joint Status Report and concur in this section of the Joint Status Report concerning the Status of Pleadings in Third-Party Action.

**Motions:**

On June 17, 2013, Defendants filed their Motion to Disqualify Plaintiffs' Counsel, Plaintiffs' Opposition thereto, and Defendants' Reply (Docs. 61-72). This Motion is fully briefed. As Your Honor is aware, this Motion must be argued under seal pursuant to the Parties' Stipulation and Protective Order (Doc. 56) and your Order dated April 23, 2013.

On November 27, 2013, Plaintiffs filed a motion to take depositions of Defendants pursuant to Federal Rule of Civil Procedure 30(b)(6) (Doc. 312). Counsel for Plaintiffs initially sent copies of the notices to counsel for Defendants on November 7, 2013 and attempted to agree upon dates for the depositions. When counsel for Defendants did not agree on dates for these depositions, the Notices were served on Defendants on November 22, 2013. The Parties met and conferred on this issue in a conference call on November 26, 2013. On December 2, 2013, the Court ordered Defendants to respond to Plaintiffs' Motion by December 4, 2013. The Defendants are filing their responses today.

**Status of Environmental Investigation of the Phoenix Property:**

The Parties attended a meeting with NYSDEC on October 22, 2013, and additional sampling on the Phoenix property is being planned for the next several months to further evaluate the contamination on the Phoenix property for purposes of designing remediation measures.

Dated: December 4, 2013

HUNSUCKER GOODSTEIN, PC

By: /s/  
Stacey H. Myers  
Michael D. Goodstein  
5335 Wisconsin Avenue, NW  
Suite 360  
Washington, DC 20015  
202-895-5380  
*Attorneys for Plaintiffs*

ARENT FOX LLP

By: /s/  
Allen G. Reiter  
Adrienne M. Hollander  
1675 Broadway  
New York, NY 10019  
212-484-3900  
*Attorneys for Defendant Quanta Resources Corporation*

McCUSKER, ANSELM, ROSEN & SULLIVAN & WORCESTER LLP  
CARVELLI, P.C.

By: /s/

Andrew E. Anselmi  
Maura W. Sommer  
210 Park Avenue  
Suite 301  
Florham Park, NJ 07932  
973-635-6300  
*Attorneys for Defendants Exxon Mobil  
Corporation and ExxonMobil Research and  
Engineering Company*

By: /s/

Jerome C. Muys, Jr.  
Attorney at Law  
1666 K Street, NW  
Washington, DC 20006  
202-370-3920  
*Attorney for Third Party Defendant Emhart  
Teknologies LLC*

ScHENCK, PRICE, SMITH & KING, LLP

FOX ROTHSCHILD LLP

By: /s/

Sean Monaghan  
John Patrick Campbell  
220 Park Avenue | PO Box 991  
Florham Park, NJ 07932  
973-631-7856  
*Attorneys for Third Party Defendant Wyman-  
Gordon Company*

By: /s/

Sharon Oras Morgan  
Oksana G. Wright  
919 North Market Street  
Suite 1300  
Wilmington, DE 19899  
302-654-7444  
*Attorneys for Third Party Defendant Waste  
Management of Maryland, Inc.*

ARCHER & GREINER, P.C.

By: /s/

Pete Jamison, Esq.  
Daniel Charles Ritson  
One Centennial Square  
Haddonfield, NJ 08033  
856-354-3055  
*Attorneys for Third Party Defendant NL  
Industries, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of December, 2013, I electronically filed and served the foregoing document with the Clerk of the Court for the United States District Court Eastern District of New York by using the CM/ECF system. I certify that the following counsel in the case are registered CM/ECF users and will be served via the CM/ECF system:

Sandra Lynn Levy [Sandra.Levy@usdoj.gov](mailto:Sandra.Levy@usdoj.gov)

Daniel Riesel [driesel@sprlaw.com](mailto:driesel@sprlaw.com)

Gordon J. Johnson [GoJohnso@mtahq.org](mailto:GoJohnso@mtahq.org)

Allen G. Reiter [reiter.allen@arentfox.com](mailto:reiter.allen@arentfox.com)

Norman Walter Bernstein [nwbernstein@nwblc.com](mailto:nwbernstein@nwblc.com)

Reed W. Neuman [rneuman@nossaman.com](mailto:rneuman@nossaman.com)

Kerry Ann Dziubek [kerry.dziubek@aporter.com](mailto:kerry.dziubek@aporter.com)

Charles M. Tomaselli [ccjt88@aol.com](mailto:ccjt88@aol.com)

Camille V. Otero [cotero@gibbonslaw.com](mailto:cotero@gibbonslaw.com)

Lawrence C. Jenkins [ljenkins@mtahq.org](mailto:ljenkins@mtahq.org)

John Patrick Campbell [jpc@spsk.com](mailto:jpc@spsk.com)

Timothy E. Corrison [tcorrison@connellfoley.com](mailto:tcorrison@connellfoley.com)

Thomas R. Smith [smithtr@bsk.com](mailto:smithtr@bsk.com),

Robert R. Tyson [tysonr@bsk.com](mailto:tysonr@bsk.com)

Michael G. Murphy [mmurphy@bdlaw.com](mailto:mmurphy@bdlaw.com)

William S Hatfield [whatfield@gibbonslaw.com](mailto:whatfield@gibbonslaw.com)

Andrew E. Anselmi [aanselmi@marc-law.com](mailto:aanselmi@marc-law.com),

Mark D Kindt [mark.kindt@novelis.com](mailto:mark.kindt@novelis.com), [mkindt@kindt.com](mailto:mkindt@kindt.com)

Timothy M. Sullivan [tsullivan@bdlaw.com](mailto:tsullivan@bdlaw.com)

Jennifer Lynn Coghlan [jcoghlan@sprlaw.com](mailto:jcoghlan@sprlaw.com)

Emily A Kaller [ekaller@greenbaumlaw.com](mailto:ekaller@greenbaumlaw.com),

Sean Monaghan [sm@spsk.com](mailto:sm@spsk.com), [stmonaghan@comcast.net](mailto:stmonaghan@comcast.net)

Jerome Muys [jmuys@sandw.com](mailto:jmuys@sandw.com)

Donald J. Fay [djf@lawwmm.com](mailto:djf@lawwmm.com)

Katya T Jestin [kjestin@jenner.com](mailto:kjestin@jenner.com),

Daniel Charles Ritson [dritson@archerlaw.com](mailto:dritson@archerlaw.com), [danielritson@gmail.com](mailto:danielritson@gmail.com)

Danielle Elizabeth Mettler [dmettler@hblaw.com](mailto:dmettler@hblaw.com), [danielle.mettler@gmail.com](mailto:danielle.mettler@gmail.com)

Stephen Scotch-Marmo [stephen.scotch-marmo@bingham.com](mailto:stephen.scotch-marmo@bingham.com)

Allison A. Torrence [atorrence@jenner.com](mailto:atorrence@jenner.com)

Thomas F Walsh [twalsh@hblaw.com](mailto:twalsh@hblaw.com), [dmartelle@hblaw.com](mailto:dmartelle@hblaw.com)

Adrienne M. Hollander [hollander.adrienne@arentfox.com](mailto:hollander.adrienne@arentfox.com)

Oksana Gaussy Wright [owright@foxrothschild.com](mailto:owright@foxrothschild.com)

Keri L. Holleb Hotaling [khotaling@jenner.com](mailto:khotaling@jenner.com), [docketing@jenner.com](mailto:docketing@jenner.com)

Susan C Gieser [sgieser@lawwmm.com](mailto:sgieser@lawwmm.com)

Puja Bhatia [pbhatia@nossaman.com](mailto:pbhatia@nossaman.com)

Sharon Oras Morgan [smorgan@foxrothschild.com](mailto:smorgan@foxrothschild.com), [cgurley@foxrothschild.com](mailto:cgurley@foxrothschild.com)

Megan E Baroni [mbaroni@rc.com](mailto:mbaroni@rc.com)

Bina R. Reddy [breddy@bdlaw.com](mailto:breddy@bdlaw.com)

Richard Eric Leff [rleff@mcgivneyandkluger.com](mailto:rleff@mcgivneyandkluger.com)

James Patrick Ray [jray@rc.com](mailto:jray@rc.com)

Marka Belinfanti [mbelinfanti@hinshawlaw.com](mailto:mbelinfanti@hinshawlaw.com)

Duke K. McCall , III [duke.mccall@bingham.com](mailto:duke.mccall@bingham.com)

Doreen A. Simmons [dsimmons@hancocklaw.com](mailto:dsimmons@hancocklaw.com)

/s/ Stacey H. Myers  
Stacey H. Myers